TARIFF PREFERENCES AND DISCRIMINATIONS IN TRADE

WILLIAM S. CULBERTSON
Member, United States Tariff Commission

THE existence and growth of import and export preferences throughout the world can not be matters of indifference to the American people. We are being driven steadily toward a larger and larger participation in foreign trade and finance. Our manufacturing industries have grown strong financially and technically. Although our country is rich in natural resources, we shall have to import increasingly greater quantities of important raw materials, some of which, as for example, jute, rubber and tin, can only be had from overseas. Exporting, once incidental, has become essential to the prosperity of many of our manufacturing concerns. The markets of tropical colonies, especially, offer large opportunities. These areas, many of them populous, develop manufactures slowly and look to the great industrial nations to supply their needs of finished articles. American shipping is also stimulating our interest in the commercial policies of nations. American ships, which before 1915 carried less than 10 per cent of our sea-borne imports and exports, carried in 1919 36.4 per cent. In addition, we have made enormous private and public loans abroad, our banking institutions are establishing foreign branches, and American capital is claiming its share in the development of the world's resources.

These conditions make discriminations in trade of more than academic interest to us. Our overseas possessions are limited in extent and our proclaimed policy is to diminish rather than increase them. Viewing the problem for the moment from the point of view of our selfish well-being alone, we have nothing to gain from an extension of the old policy of preference and exclusion in colonial possessions. Our interest, and I am convinced the long-run interest of all nations, is in the widest adoption of the principle of equality of treatment or, as it is

called, the "open door." [1] Unfortunately, however, this policy since the '80's of the last century has been losing ground. Nations have accepted it with growing reluctance and where they have acquiesced, it has at times been evaded. With the growth of colonial empires has gone the extension of discriminatory practices. The closing of the door by preferential duties has had both political and economic objects. Of the latter, two are of special interest: First, the desire to give national industries advantages in marketing their goods in colonies, and second, the desire to assure to consumers in the mother country a preference in obtaining, or a monopoly of, essential raw materials.

Preferential Import Tariffs: France

First, let me speak of preferential import tariffs. France as a colonial power is second only to Great Britain. The aim of French colonial tariff policy adopted in 1892 is assimilation, *i. e.*, to establish free trade between France and the colonies and to require foreign goods imported into the colonies to pay the rates of the French tariff. Naturally, in practice this policy has been modified by exceptions, but it has been applied in all its essentials to the important French possessions—Algeria, Indo-China, Tunis (in part), Madagascar, New Caledonia, French Guiana, Gaboon, Reunion, Martinique and Guadeloupe. A few of her colonies France has not assimilated but has simply introduced into their tariffs preferential rates in favor of French goods. In this class are French West Africa, French Oceania and St. Pierre and Miquelon. Moreover, France is a party to a number of "open-door" treaties, by which she has pledged herself to a policy of equal treatment in Morocco, Dahomey, and the Ivory Coast. In one or two of her colonies, as for example, in Somaliland, she maintains the "open door" as a matter of policy. In general, however, it

[1] It would seem unnecessary to point out that the phrase "open door" does not refer to the highness or lowness of tariffs and is never to be translated "free trade". Nevertheless, when this address was delivered, certain newspapers fell into this error. The phrase "open door" simply means that whatever tariff duties, port charges, and other commercial exactions there are, shall be applied equally to citizens of all nations. The American public has thus understood the phrase, especially since Secretary of State Hay secured pledges for the open door in China.

may be said that the drift of French colonial policy is toward assimilation.

Spain, Portugal and Italy

Spain and Portugal, the oldest, and Italy, one of the newest of the colonial powers, have preferential features in the import tariffs of their colonies, and they also grant preferences in their home markets to products of their colonies. Adherence to a policy of colonial monopoly is traditional with Spain and Portugal. As regards Spain, her preferences were of greater significance before she lost Cuba, Porto Rico and the Philippines. Now, with but a remnant of her empire left, they are of little commercial importance. Portugal, however, controls large territories. Those which fall within the conventional basin of the Congo have their tariffs determined by the open-door provisions of treaties, but elsewhere—in Mozambique, Angola and several island colonies—she pursues a policy of preference. The preferences to colonial goods are also granted in the home market of Portugal, but since 1892 they have been limited to goods shipped in Portuguese vessels.

Italy's chief colonies are Eritrea, Somalia and Lybia. They are of comparatively little commercial importance. The duties are low, but the preferences in favor of Italian goods are substantial and the tendency is to increase them.

British Dependent Colonies

In addition to the self-governing dominions, which I shall pass over for the moment, the British Empire consists of varied and numerous colonies, protectorates and spheres of influence. Some of them have a degree of fiscal autonomy; others have their tariff policy determined in London. After the triumph of free trade in the middle of the nineteenth century, Great Britain insisted upon the "open door" in her dependent colonies. But there have been a few exceptions. In 1913, as a result of negotiations between Canada and some of the British West Indies, preferences were granted to goods from Great Britain imported into those West Indian colonies. The Crown Colonies of South Africa, especially Rhodesia, which are a part of the South African customs union, have for years granted preferences to British goods. These

preferences, however, did not reflect the policy of the home government.

Since the Great War there has been a change in the attitude of the British government. With the introduction of preferential features in 1919 into the tariff of Great Britain, momentum has been given to a tendency to adopt preferential provisions in the Crown Colonies. During this year preferences were established in favor of British goods in Malta [1] and Cyprus and in those West Indian colonies which held aloof in 1913 from the preferential movement. Indeed, signs are not absent indicating a return by Great Britain to the policy of colonial exclusion which we had hoped had passed with the harsh days of mercantilism.

India has already adopted a preferential export tax on hides and skins of which I shall treat presently, and preferences in her import schedules are being considered. In 1903 a government report upon the establishment of preference to British goods in India, opposed such preferences on the grounds that it would cause difficulties in India's finances, that it would be of no considerable advantage either to India or to Great Britain, and that it would involve the danger of retaliation. A recent commission, after investigation, submitted its report during the present year without making any positive recommendations. It expressed the opinion, however, that in view of the demand for Indian raw materials, there was no danger of retaliation by foreign countries.

> There is every evidence to suppose [the Commission stated] that the conclusion of peace initiates a period of keen competition for the world's raw materials. . . . If this view is correct and our export trade is not likely to be seriously prejudiced, the danger of disturbing our favorable balance of trade and the risk of our currency policy . . . need not give cause for serious anxiety. In this statement it is assumed that any preference to be given in India to Empire products shall in general be to a moderate extent. The view has not infrequently been expressed that one of the reasons why the world-wide extension of the Empire has hitherto received the acquiescence and even the good-will of the majority of foreign nations has been our adoption and maintenance of a policy of free trade. If the preference

[1] The preferences to products of the British Empire were included in the bill published in the Malta Government *Gazette* of March 24, 1920. These preferences, however, have since been abandoned. They do not appear in the new law enacted November 19, 1920.

accorded were excessive this good-will would disappear, while, on the other hand, a moderate degree of preference to Empire products should not be regarded by foreign nations as more than a matter of domestic concern.

The Commission concluded that " though India may have little to gain from a scheme of Imperial Preference, she is not likely to lose more than she gains", and "that a favorable rate of duty would be of no small advantage to the United Kingdom, in so far as the Indian import trade is concerned." Regarding the possibility of retaliation by the United States, the Commission expressed the opinion that, in view of the importance of Indian raw materials to American industries, it was " extremely improbable that the United States would introduce a tariff specially directed against Indian exports, and it seems probable that they could not do us much harm if they did."

Japan

Japan's colonial tariff policy is assimilation. She has assimilated Formosa and Saghalin, and in August, 1920, the ten-year guarantee of the open door having expired, Korea was assimilated. Japan's disposition to adopt the closed door in her colonies receives its chief significance when considered with reference to those territories on the continent of Asia which she either controls or desires to control.

The United States

With the exception of American Samoa, where the open door [1] is guaranteed by treaty, free trade exists between the United States and her non-contiguous territories, while foreign goods pay duties. Porto Rico and Hawaii are completely assimilated, the tariff laws of the United States being in force in those islands. The Virgin Islands, Guam and the Philippines have separate tariffs applicable to foreign goods. The treaty of 1898 with Spain granted to her for ten years equality of treatment in the ports of the Philippine Islands and as a result the open door was maintained there until 1909. It was then abandoned. American goods imported into the Islands were made free of duty, and conversely, with a few exceptions,

[1] Strictly speaking, the treaty between the United States, Germany and Great Britain, concluded December 2, 1899, simply guaranteed equal treatment to the commerce and commercial vessels of the three signatory Powers.

Philippine goods entered the United States free. Even the exceptions were omitted in 1913. The act of 1916 establishing the government of the Philippines reserves to the United States Congress the right to regulate the trade between this country and these Islands.

Raw Materials and Preferential Export Taxes

So much for the essential facts concerning preferential import duties by which nations seek to give their industries an advantage in trade in the markets of those territories over which they hold political control. Equally, and perhaps more, important are preferential export taxes and regulations by which nations endeavor to give to their industries a preferential advantage in the supplies of raw materials from their colonies.

Export taxes without preferential features may, under some conditions, be justifiable, although as a rule they are regarded as undesirable. They are forbidden by our constitution and are therefore unfamiliar to us. The only export tax directly authorized at the present time by the United States Congress is the export tax of eight dollars per short ton on sugar exported from the Virgin Islands. This tax, as well as the other export taxes inherited from the Danish regime, applies alike to sugar destined for the United States and foreign nations and is levied for fiscal reasons. Indeed, in countries which export large quantities of foodstuffs and raw materials, export taxes are frequently adopted as an equitable method of taxing production and are regarded as a substitute for land and poll taxes.

Preferential export taxes, however, raise fundamentally different questions. Before the war Portugal, alone of colonial powers, had adopted preferential export taxes as a general policy with the primary purpose apparently of building up her home entrepôt trade. Isolated cases, however, were not infrequent. The French had them in Indo-China; the Spanish in Fernando Po; and the Italians in Somalia. To exemplify the principles involved I shall give two additional cases in some detail.

Tin Ore from Federated Malay States

A differential export duty on tin ore from the Federated Malay States was established in 1903. There were export

duties which applied to all exports of tin and tin ore, including those which were sent to Great Britain and other parts of the Empire but an additional duty of 30 Straits, or Mexican dollars, per picul was imposed on all ore exported without guarantees that it would be smelted in the Straits Settlements. In 1904 the United Kingdom was exempted from the provision of this duty and Australia was accorded similar treatment in 1916. This additional duty is prohibitive. A reason for this duty is given by Sir Frank Swettenham, who was Resident General at the time when the duty was imposed, in a book published about four years later.[1] He said: "An American attempt to transfer this tin-smelting to American soil, and so obtain, in time, complete control of Malay tin production, was frustrated by imposing a prohibitive duty on the exportation of tin ore and giving an equivalent rebate on all ore smelted in the Straits Colony." At the time the differential was imposed an American concern was making the first attempt to smelt tin ore in the United States. There was no danger of this concern monopolizing the Malay tin ore supply, as suggested. The true reason for the prohibitive surtax probably was to prevent any competition whatever with the tin smelters of the Straits Settlements.

Philippine Hemp Duty

The export duty on hemp from the Philippine Islands, which was remitted in the case of all shipments to the United States, will serve as a second instructive case. The export taxes of the Spanish tariff in the Philippines were retained by the United States when the Islands came into our possession. The most important of these taxes was that on raw hemp, which was increased under the tariff act framed in 1901 by a commission appointed by the War Department, from the Spanish rate of 37½ cents per one hundred kilos to 75 cents per one hundred kilos. The United States did not enjoy a preference under this tariff. But in the tariff enacted for the Philippines by the Congress of the United States on March 8, 1902, it was provided (Sec. 2) that Philippine products which entered the United States free of duty should, if destined for American

[1] British Malaya (1907), p. 333. *Cf.* "The Mineral Industry, Its Statistics, Technology and Trade During 1903," pp. 325 and 330-331.

consumption, be thereafter exempt from any export duties imposed in the Philippines. The loss in revenue to the Philippine treasury caused by the remission of the export taxes was to be made up by the provision that all duties collected in the United States on imports of Philippine products should be refunded to the Philippine treasury. As a matter of fact, however, according to official figures cited by President Taft, who formerly was head of the Philippine Commission, the Philippine treasury from 1902 to 1912 lost through remission of the tax on hemp more than a million dollars. There was vigorous opposition in the Philippines to the remission of the export duty on hemp exported to the United States. This opposition was voiced by the Philippine Commission in its annual reports, from which I have taken the following as typical:

> It is a direct burden upon the people of the Philippine Islands, because it takes from the insular treasury export duties collected from the people and gives them to manufacturers of hemp products in the United States. These manufacturers were already prosperous before this bounty was given them and it seems hardly consistent with our expressions of purpose to build up and develop the Philippine Islands when we are thus enriching a few of our own people at their expense.

The provision for export taxes to the Philippines was finally repealed by the Underwood Tariff Act of October 3, 1913, and the Philippine Government Act of 1916 provided that no export taxes should be levied in the Philippines.

The War and Raw Material Control

The experience of the war period emphasized forcefully the vital importance of raw materials to advanced industrial nations. As essential as markets in which to sell goods are the supplies of raw materials from which goods are made. I had hoped that the exclusive policy embodied by the Allies in the Paris Economic Resolutions of June, 1916, was merely a military strategy, but it is still advocated and followed.

Palm Kernels and Hides

The British colonies of West Africa—Nigeria, Gold Coast, Sierre Leone—export large quantities of palm kernels—an important raw material in the margarine and soap industries.

Before the war, about three-fourths of the West African palm kernels went to Germany. In 1916 a British committee studied the palm-kernel crushing industry and recommended the imposition of a surtax of £2 per ton to be remitted in the case of all shipments to points within the British Empire, with guarantees that crushing—the first step in the industrial process—should take place there. In a debate in the House of Commons, this tax was compared with the duty on hemp exported from the Philippines to the United States, which I have mentioned.[1] Its purpose was clearly to establish and maintain the crushing industry in Great Britain.

Perhaps of more direct interest to us is the preferential export tax imposed on hides and skins exported from British India. On September 17, 1919, an Indian export duty of 15 per cent on untanned hides and skins was established with a rebate of two-thirds of this amount on exports to be tanned within the British Empire. This differential compels the American tanner to pay nearly 10 per cent more for Indian hides than is paid by tanners in Great Britain and Canada. American tanners will naturally seek their supply of hides in countries which impose no export tax, but in so far as they have to buy Indian hides, they are at a disadvantage in marketing their product because of this differential tax on their raw material. Export taxes in a foreign country, which enhance the price of a raw material, increase the cost of production and tend to increase prices to the American consumer. They also handicap our producers in their competition in foreign markets.

The Open-Door Principle

We must turn back to the heroic age of discovery and exploration of the fifteenth, sixteenth and seventeenth centuries if we are to understand the principles which underlie the colonial policies which I have just reviewed. The colonial monopolies of Spain and Portugal, the rise of the Dutch and their establishment of exclusive trading privileges in the Spice Islands, and the struggle of the French and English for colonial empire in America and in India, recall to us the harsh days of mercantile policy. The old colonial regime of each of these powers was based on the principle of the closed door.

[1] *Parliamentary Debates*, November 8, 1916, vol. 87, pp. 249-367.

Portugal made trade a state monopoly. Other nations granted monopolies to chartered companies, many of which became famous, as for example, the Dutch East India Company and the British India Company. Political control of colonies was assumed to give a nation the right to exclusive exploitation. Prohibitions and restrictions were often enforced by military power and became the very basis of colonial policy. These were also the days of the navigation laws. The American Revolution gave the first rude shock to this theory of colonial government, but it by no means swept it from the commercial policy of nations.

Enthusiasm for colonies cooled perceptibly after the Wars of Napoleon and did not flare up again until the '70's of the last century. The teachings of the French revolutionists and the classical economists contributed to a public sentiment which regarded colonies as a burden. In France alone did the anti-colonial movement have little influence with the government. In the British Empire, particularly, the free-trade movement resulted in an abolition of practically all preferential features. Then came that extraordinary revival of interest in colonies beginning about the time Stanley emerged from Africa in 1877 and sweeping on with increasing force to our own day. It came for many reasons. National sentiment was uniting the German and Italian states and national pride as well as a desire for power prompted statesmen to seek new possessions. The growth of industry—large-scale production—and the improvements in communication and transportation made certain classes in the more advanced nations desire foreign markets and foreign sources of food and raw materials.

When this reawakening came, Spain held sovereignty over only a shadow of her former empire. Portugal claimed wide expanses of territory in Africa to much of which other powers did not concede her right. The Netherlands still held the Spice Islands. These three powers took a new interest in their colonies but sought no new territory. France had a respectable empire and had footholds on the coasts of Africa from which she later pushed into the hinterland. Great Britain had under her control the greater part of her present wideflung empire. Belgium, Germany, Italy, Japan and the United States, each of which subsequently became a colonial power,

had at this time no possessions at all.[1] Nations, looking over the earth for opportunities for colonial expansion, found the American hemisphere closed to them by the Monroe Doctrine. Had it not been for the policy of the United States, it can not be doubted that spheres of influence would soon have been staked out in Latin America by the land-hungry powers of Europe. The powers which took part in the scramble for colonies turned their attention to Asia, where they began to define their "spheres" in utter disregard of the rights and desires of the yellow and brown man, and to Africa, which they began to partition among themselves.

Even at that time the open-door principle was not without its defenders. From various motives Great Britain, Belgium, the Netherlands and Germany maintained it in their dependent colonies. John Hay's famous "open-door" notes saved the integrity of China in 1899. In the same year a treaty between the United States, Great Britain and Germany partitioned the Samoan group between the United States and Germany [2] and provided that the three powers "shall enjoy in respect to their commerce and commercial vessels, in all the islands of the Samoan group privileges and conditions equal to those enjoyed by the sovereign Power." In 1898-9 the French and English agreed to maintain for thirty years the open door in Dahomey, the Ivory Coast, Nigeria, and large areas in Central Africa. In 1906 the Anglo-French open-door treaty affecting the New Hebrides was adopted and in the same year the international conference at Algeciras established the open door in Morocco. Probably the best known of the open-door treaties was adopted at the Berlin Conference in 1885. A revision of it was signed in 1919, but has not been ratified. Under this treaty freedom and equalty of trade in the conventional basin of the Congo and unrestricted navigation of the river are guaranteed. These open-door treaties and understandings have, in most cases, been adopted with reference to territories over which no one nation held undisputed control and in the conflict of interests which arose, a solution was sought in granting to each nation equal opportunity to trade.

[1] United States had Alaska.

[2] Great Britain received compensation elsewhere.

The Open Door and Mandates

The basic commercial theory of mandates under the League of Nations is the open door. Article XXII of the Covenant, it is true, provides for "equal opportunity for trade and commerce" only in the case of Class B mandates. The principle governing Class A and Class C mandates is to be sought in the general spirit of Article XXII and in the provision of Article XXIII providing for "equitable treatment for the commerce of all members of the League." There are those who advocate the policy of the closed door in mandated territories. New Zealand has already extended her preferential duties to the portion of the Samoan group which she holds under a mandate, and the South African Union has assimilated German Southwest Africa. There have also been discussions of equal opportunity in the exploitation of the resources of Mesopotamia.

Less known than some of these cases, but of absorbing interest, is the case of the Island of Nauru, which not only illustrates the issues involved in the mandates, but illuminates colonial policy generally. The Island of Nauru is situated in the Pacific Ocean to the west of the Ellice and Gilbert Islands and south of the Marshall Islands and is believed to be the largest reserve of high-grade phosphate in the world.[1] The Island was annexed by Germany in 1888 and on September 9, 1914, was surrendered unconditionally to an Australian ship. It was turned over by the Allied and Associated Powers under a mandate to the British Empire. The phosphate concession was held from the German government by a private syndicate. On July 2, 1919, the governments of Great Britain, Australia and New Zealand entered into an agreement to purchase this concession. This agreement provided, among other things, that the phosphates are to be sold at cost to the three governments, the cost price to include interest, a sinking fund for the payment of the capital, working expenses and contribution to administrative expenses. No phosphates are to be sold to or for shipment to any other country until after the requirements of Great Britain, Australia and New Zealand

[1] Announcement has been made recently of rich phosphate deposits discovered in Morocco.

have been met, and then only at the market price. The agreement was ratified by Australia and New Zealand and when presented to the House of Commons called out a very interesting debate. The British government contended that the agreement was not contrary to the Covenant of the League of Nations. Colonel Leslie Wilson, the Parliamentary Secretary to the Ministry of Shipping, who sponsored the bill for the government, declared that the question of this transaction between the three governments was

entirely distinct from any other question which might arise as to the mandate under the League of Nations. This is a purely commercial transaction between the phosphate company and the three governments concerned. Whatever happens, I can not see that the League of Nations has any right to interfere with this particular transaction between the company and the governments concerned. I do not see the difference between the purchase of this trading company by the three governments and the purchase by an individual.[1]

Colonel Wilson even went so far as to deny that other nations were entitled to equal treatment in trading with Nauru.

The mandate [he asserted] was granted to the Empire. . . . There is no doubt from the papers laid on the table of the House, and from facts which have been accepted by that great exponent of the League of Nations, General Smuts, that there never was the slightest intention that Class C mandates should be subject to the principle of the open door.[2]

Mr. Bonar Law, leader of the House, takes the same position.

Nauru in effect is a phosphate island [he argued]. It has been a commercial undertaking. It was in the possession of a company, . . . and if we do not pass this bill, that company would have every one of the rights which we are now claiming for the British Empire. It could treat the product of that Island in any way it liked, and therefore it is obvious that, so far as the general good of the world is concerned, nothing is lost by transferring this power to a body represented by the British Empire as compared with a private trading company.[3]

He declared, however, that

passing this bill does not in any sense preclude the League of Nations, if

[1] *Parliamentary Debates*, House of Commons, vol. 130, no. 78, p. 1358; and no. 80, p. 1609.

[2] *Ibid.*, vol. 132, no. 102, p. 195.

[3] *Ibid.*, vol. 130, no. 78, p. 1324.

they think the arrangement is an unfair one, from refusing to confirm it. . . . I have myself no doubt that the League of Nations will agree to it.[1] I do not think any supporter of the League of Nations could say that they have the right to upset a purchase of this kind. They have the right to interfere with the administration. I think this is so vital, that I would like to make it clear. . . . The two questions are quite distinct. One is the administration of territory, which the League of Nations has a perfect right to see is properly done. The other is the purchase of a trading company. I do not think that is a subject which would properly come under the League of Nations at all.[2]

On the subject of the "open door" the leader of the House said:

It is only in the fifth paragraph of Article XXII of the Covenant of the League of Nations that "equal opportunities for the trade and commerce of other members of the League" are expressly provided for. The territories to which this provision applies are those which formerly constituted German East Africa, the Cameroons and Togoland. In the case of the former German colonies, which, under the sixth paragraph of Article XXII are to be administered "under the laws of the mandatory as integral portions of its territory", the provision of equal opportunities for trade and commerce will be a matter for the discretion of the mandatory.[3]

The position of the government was vigorously assailed in the debate on the bill, particularly by the Liberal and Labor parties of the House, who charged that the agreement was a violation both of the spirit and letter of Article XXII of the Covenant of the League of Nations. Mr. Ormsby-Gore questioned the right of a government which is acting as a mandatory to establish a government monopoly of the raw materials of the territory of which it is trustee.

That is a root principle [he said]. Because, if that is once established, I do not see why the French in the Cameroons should not establish a government monopoly of all the native produce of that country, and why all the produce of other places should not be similarly regulated. . . .

A great many people want to see the League of Nations a reality and to see the Treaty of Versailles carried out, and they do not want this country to be the country which is going to fly in the face of a conference with results which are bound to be extremely far-reaching, because it is really a test question. If these mandates are a sham, are only camouflage, it is much better to be out of the Covenant, much better to withdraw our signature

[1] *Ibid.*, p. 1326.

[2] *Ibid.*, pp. 1326-1331.

[3] *Ibid.*, vol. 131, no. 97, p. 2164.

from the Covenant. Then we should know where we are. Either you are going to act up to Article XXII or you are not, because that is going to be the question asked in Mesopotamia, Palestine, and all these countries of the world. There is no use in saying that we are working this in the Belgian part of East Africa, that we will see that the French are not allowed to conscript people in Togoland under Article XXII, but when it comes to applying that article to our possessions, then we are going to tear up the mandatory principles and create these government monopolies.[1]

Lord Robert Cecil, leader of the opponents of the agreement bill, said:[2]

Some honorable gentleman suggested that this is nothing but sanctioning a purely commercial agreement handing over the powers of the phosphate company to the British Government. It is nothing of the kind. The phosphate company, in fact, was working under the German Government—let us remember that—and while working under the German Government it traded freely with those who became subsequently the enemies of Germany. . . . Here we are going to preclude the possibility of a single ton of phosphate being sold to anybody except the three governments concerned and for our own personal use.

I will not say [he continued] if the League were to sanction that arrangement that that would not be consistent with the terms of the Covenant, but I do say it is altogether inconsistent with the spirit of Article XXII. Undoubtedly, there was no idea that the mandatory was to use this power in order to secure a monopoly of the riches of the mandated country. That is absolutely inconsistent with the whole framing of Article XXII.

It seems to me if we go on with this proposal it is perfectly fatuous for us to talk any more about scraps of paper.[3]

Mr. Herbert H. Asquith, leader of the former Liberal Government, asserted that the agreement is one which

has no legal or international validity of any sort or kind and which indeed, in the terms in which it is made, is in flagrant contravention of both the letter and the spirit of the Covenant of the League of Nations. It is a small case in itself, but it would be a precedent. If this is done in the case of the Island of Nauru, there is no reason why similar agreements should not be secretly and behind the back of the League of Nations concluded all over the world.

This is the latest form of preference! Here is a mandate given to the British Empire, confined so far as its practical operation is concerned to three of its constituent members, and, what is much more important, when you come to hand over the phosphates for them to go to three selected parts

[1] *Ibid.*, vol. 130, no. 78, p. 1311 *et seq.*

[2] *Ibid.*, p. 1321.

[3] *Ibid.*, p. 1319.

of the Empire and not to the rest. . . . You are going to give preferential treatment to particular parts of your own Empire as against the rest of the world. A worse example to set and one in more open contradiction to the provisions of the fifth paragraph of Article XXII, which provides that in the execution of a mandate equal opportunities shall be secured for the trade and commerce of all the other members of the League, I think it is impossible to conceive. It is illegal in its origin, unequal in its operation, it is opposed in all respects to the letter and the spirit of the Covenant of the League of Nations.[1]

The bill providing for the ratification of the Nauru agreement was finally amended in its ratifying clause to read

the agreement is hereby confirmed, subject to the provisions of Article XXII of the Covenant of the League of Nations.[2]

British Preferential Tariffs

I made only passing reference in my discussion of colonies to the self-governing dominions of the British Empire, since they are hardly to be classed as colonies. The bond between them and Great Britain has been referred to as an "alliance," and that relationship seems more accurate than the relationship of mother country and colony. The self-governing dominions—Canada, Australia, New Zealand and the Union of South Africa—are, in all internal matters, independent, and in foreign affairs their desire is now seldom, if ever, disregarded by the London government. Empire sentiment has grown and thrived among them, but they make all their own laws, including protective tariffs which protect their industries against those of Great Britain. They are not bound by provisions in British treaties unless they elect to be (except in the case of a few old and unrevised treaties). Their divergent interest and freedom of independent action in this respect is safeguarded by a provision inserted in the treaties of Great Britain since the beginning of this century making these treaties applicable to British colonies, possessions, protectorates beyond the seas only upon notice to that effect given through the British Foreign Office. Separate withdrawal, as well as separate adhesion, is also permitted to the overseas possessions upon notice. Canada conducted the reciprocity negotiations of

[1] *Ibid.*, pp. 1322-23.

[2] The Nauru Island Agreement Act, 1920 (10 & 11 Geo. 5, Chapter 27).

1910-11 with the United States direct and not through the Foreign Office at London. These dominions entered the Great War of 1914-18 voluntarily and the London government was not in a position to compel them at any time to send a single soldier or to pay a single dollar. They maintained their own overseas units. They sat in the Peace Conference as nations, signed the Peace Treaty as nations, and are participating in the League of Nations as nations. South Africa, New Zealand, and Australia were granted former German territories which they now hold under mandates. Even in recent months we have heard it seriously proposed that Canada and Australia shall send ministers to Washington.

Nevertheless, the most elaborate system of tariff preferences in the world is found in the tariffs of these dominions. These preferences discriminate against nations outside of the British Empire with whom the dominions claim the privilege of sitting as equals in the councils of nations and even against parts of the Empire. The dominions give preference to Great Britain and sell it to each other. The Customs Union of South Africa grants preferences to Great Britain; New Zealand imposes a surtax on all goods imported from points outside the British Empire; and Australia, which established preference in favor of British goods in 1907, enacted in 1920 a three-schedule tariff granting to British goods substantial preferential treatment and yet leaving the minimum duties sufficiently high to protect the nascent industries of Australia.

The Canadian tariff is most familiar to us in the United States. It has three schedules, the lowest or preferential tariff, granted to goods imported from the United Kingdom and from reciprocating parts of the British Empire; the intermediate tariff, used for bargaining with other nations, and the general, or highest, tariff, imposed on all other goods. The United States pays the general tariff.

Most striking in the system of British preference has been the development of preferential agreements among the different parts of the British Empire. They recall the exclusive reciprocity agreements of the United States under the tariff acts of 1890 and 1897, of which the American preference in the Brazilian market is the sole surviving remnant. Today there are special agreements between Australia and South

Africa, between New Zealand and South Africa, and between Canada and the British West Indies. This last-named agreement became effective in 1913. A revision of it was signed on June 18, 1920, and as yet has not been ratified by all the parties. Under it Canada receives substantial concessions in the tariffs of the British West Indies and grants in return substantial preferences to British West Indian goods imported into Canada.

The modern policy of preference in the British Empire originated in the dominions. For years the British government withstood the urgings of the colonies to grant their products preferential treatment in the markets of Great Britain. The war, however, brought a change. Preferences in favor of Empire goods were introduced into the whole schedule of dutiable articles in the British budget of 1919. The list of products includes, among others, tea, cocoa, coffee, currants, sugar, tobacco, wines and spirits. More significant than the preferences on this limited list of imports is the fact that the principle of preferential tariffs has at last been recognized by the British government. During the debate on the budget of 1919 it was proposed to extend the privileges of the preferential provisions to the mandated territories, and to do this there was added to the definition of "British Empire" in the original bill the words "or is a territory in respect of which a mandate of the League of Nations is exercised by the government of any part of His Majesty's Dominions."

The Menace of Trade Wars

The conditions which I have reviewed today constitute a problem not only for the United States but for every nation. Its solution depends fundamentally upon the spirit in which it is approached. If it be said uncompromisingly that reciprocity agreements and colonial preferences are *domestic* questions, no progress can be made. Nations have, under the commercial standards of the past, an abstract right to impose practically all the discriminations I have mentioned. Bargaining and penalty tariffs [1] have been, with rare exceptions,[2] con-

[1] United States Tariff Commission Report, "Reciprocity and Commercial Treaties."

[2] Trade war between Germany and Canada, *op. cit.*, p. 479.

sidered applicable only to cases of direct discriminations in national tariffs and the most-favored-nation clause in modern commercial treaties does not usually apply to special relations between colonies and the mother country. It is, therefore, not a question of right which is before us. Each nation may stand on its rights and let the world go hang. Statesmen may cling to

> "... the good old rule,
> ... The simple plan,
> That they should take who have the power
> And they should keep who can."

But we get nowhere by this international anarchy. What does it profit if one nation justifies its acts of discrimination by citing those of others? Or how can one nation expect to succeed in its protest against discriminations if it refuses to give up its own? In the United States we can not consistently object, in the absence of treaty provisions, to the preferential systems of other nations so long as we retain our large preference in the Philippine market. Nor can we expect to arrest the spirit of discriminations and retaliation if we carry into practice the monopolization of Philippine shipping and the tariff discriminations in favor of goods imported in American bottoms proposed by the Merchant Marine Act. Nor can other nations expect the United States to remain indifferent while they continue to stake out exclusive preserves in the rich territories over which they hold political control.

Colonial tariffs and preferential systems, as a matter of fact, constitute a problem whose solution calls for liberal and constructive statesmanship in every nation. Today surely is no time to be dogmatic in commercial policy or to fall back on the discredited practices of the past. The adoption of the principle of equality of treatment, however, is unquestionably the first step in any plan for peace. If it be good in the case of Central Africa and other territories whose commerce is regulated by open-door treaties, it is equally desirable in other parts of Africa, in Asia, and Oceania. Exceptions are, no doubt, admissible. Let us not deceive ourselves by enlarging on things unimportant. There are cases of preference which will be readily conceded by all to be just. It is not these, however, which menace us today with trade wars. It is those compre-

hensive schemes which seek, by tariffs and other restrictions, to monopolize the markets and resources of vast undeveloped areas of the earth.

A few principles suggest themselves which should guide the commercial policy of the United States in the present situation. We should, on every possible occasion, insist emphatically upon the enforcement of existing open-door treaties and understandings and refuse to permit them to be abrogated or evaded. We should oppose the extension of colonial control over new territories or the granting of mandates except where it is accompanied by the strictest of guarantees of equality of treatment. It may even be advisable for us to seek, through new commercial treaties, the guarantee of national treatment in the colonies of those nations which still maintain the open door. Desirable as these policies are, however, they are not sufficient. It is necessary to recognize that preferential tariffs and restrictions constitute a problem which can not be solved by nations acting singly, or bargaining two by two. They present an excellent case for conference and cooperation among nations. Little will be accomplished until we recognize that tariff and other preferences are essentially international problems [1] which can be solved only by men willing to look beyond the narrow limits of national commercialism and to see the real

[1] Nations have retained, and for the immediate future at least will continue to retain, the right to levy a reasonable tariff on goods they import from abroad. How high or how low the tariff duties of a nation should be is a question primarily for domestic determination. The need of a government for revenue or of the people for food and raw materials and the stage of industrial development in which a nation may find itself constitute the determining factors. Even in the case of bargaining tariffs these factors determine the effective minimum rates.

As distinguished from the height of tariffs, preferential and discriminatory rates raise a different question. These are more obviously and always matters of international concern. When a country places the products of one people on a more favorable tariff basis than the products of another people, it has sown the seed of international illwill. Plausible arguments in favor of reciprocal arrangements and preferences do not alter the hard fact that a nation discriminated against by another has a grievance which it may nurse into a hatred. In a world where economic interests are inseparably interlocked, he is on the defensive who holds that inequalities in tariffs are not subjects for international discussion—perhaps for international decision. From Culbertson, W. S., *Commercial Policy in War Time and After* (1919), pp. 263 and 267-68.

interest of each nation in the harmonious cooperation of all. If no stay is given to discriminatory and exclusive practices which now mark the policy of almost every important nation, we shall go forward into a period of trade war and conflict from which we shall look back even upon the conditions of this day as the happy state of a golden age from which we fell.